IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3076 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

REKHABEN G PATEL

Appearance:

1. Special Civil Application No. 3076 of 1999

MR NAVIN K PAHWA for Petitioner No. 1

MR MUKESH H RATHOD for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 12/02/2004

ORAL JUDGEMENT

1. The petitioner - Gujarat State Road Transport Corporation has challenged in this petition the judgment and award rendered by the Industrial Tribunal, Surat dated 15th September, 1998 in Reference (I.T.) No. 60 of

1988, whereby it has been directed to regularize the service of the respondent on the post of Clerk with effect from 1st January, 1996 and she should be paid all the benefits that have been made available to an employee working in the grade of Clerk.

2. The facts in nutshell can be stated as under :-

The respondent joined the service of the petitioner as Part-time Clerk with effect from 28th November, 1977. Before that she had taken training as Clerk at the Division Training Centre under the Apprenticeship Act between 7th September, 1976 and 6th September, 1977. At the relevant time she was working at Adajan Rural Depot in Surat Division as Part-time Clerk. Her grievance was that despite the fact that she had been rendering service on the said post since November, 1977, she was not made permanent by the petitioner. She, therefore, raised the dispute which ultimately came for adjudication before the Tribunal at Surat by way of the aforesaid reference. Before the Tribunal, in the statement of claim, she reiterated her grievances and stated that she was fully entitled to be appointed on permanent basis in such post because she was working on part-time basis on the said post right from November 1977. She further averred that the work was of perennial nature and that the post was a permanent one even as per the staffing pattern of the petitioner. She further contended that though according to the regulations of the petitioner, the part-timer is required to render service of 5 hours, the respondent was made to work for 6 to 7 or 8 hours a day. She further averred that she possessed all the required qualifications to hold the said post. However, the petitioner was not acceding to her request only on the ground that she had appeared in the examination meant for the part-timer and had failed. She also averred that several other persons similarly situated were given appointment on the permanent basis, but she had been left out and thus discriminatory treatment was meted out to her. She, therefore, prayed that the petitioner be directed to give her appointment on permanent basis and to extent all the benefits to which a Clerk was entitled. Her prayer was that all these benefits should be made available to her from the date of her initial appointment as Part-timer i.e. 29th November, 1977.

2.1. Her claim was resisted by filing written statement at Exh. 7. In the said statement the main contention of the petitioner was that she was not eligible to be made permanent because a Part-timer to

become permanent, was required to appear in the examination and clear it. The respondent had appeared, but she failed to clear the examination and, therefore, she was not qualified for becoming a permanent employee of the petitioner. It was further contended that no discrimination was practiced in the case of the respondent, since no-one similarly situated was given employment on the permanent basis. It was, therefore, prayed that the claim of the respondent be rejected.

2.2. At the hearing before the Tribunal, the respondent has led oral as well as documentary evidence to substantiate her case. The petitioner did not examine any witness. The petitioner examined herself at Exh. 20. Over and above the averments that had been made in the statement of claim, she also stated that even her father had worked with the petitioner for considerable long time and before that he had served the nation by serving in the Army. It was also deposed by her that so far the requisite qualification is concerned for being appointed, a person had to pass the S.S.C. examination and she was a graduate. Therefore, qualification-wise also, according to her, she was required to be appointed on the same post. She has also narrated the various duties which she were required to perform as a Part-time Clerk. According to her, the work assigned to her was of permanent nature. She was cross-examined by the otherside, but nothing of any substance appears to have been brought out in the cross-examination, except the admission that she had appeared in the examination but failed.

2.3. So far the respondent is concerned, she also examined one Dhanvadanbhai Rangildas, a retired employee of the petitioner. He has been examined to corroborate the version of the respondent. This witness has further stated that though the Part-timers were required to appear in the examination to become permanent, there was no such regulation requiring them to appear in the examination.

3. The Tribunal, at the end of the proceedings, came to the conclusion on the strength of the material produced before it that looking to the circumstances of the case, the claim of the respondent was fully justified and she was required to be granted relief claimed by her. In view of the said conclusion, the Tribunal passed aforesaid award. The same is now being challenged before this Court in this petition.

4. Mrs. Sangeeta Pahwa, learned advocate appearing

for the petitioner has submitted that the Tribunal has committed serious error in giving the aforesaid direction because the respondent was not qualified for holding that post on permanent basis as she had not passed the requisite examination. According to her, a Part-timer was required to pass examination to be qualified for being appointed on a permanent post on permanent basis. She has further submitted that the circumstances which have been taken into consideration by the Tribunal for giving direction to the petitioner to make the respondent permanent, are not at all relevant for this purpose. According to her, the circumstances which have been taken into account are with reference to the compassionate appointment and her case is entirely different because the father of the respondent had expired after the retirement and not while he was in the service. She, therefore, submitted that this petition be allowed and the judgment and award of the Tribunal be quashed and set aside.

4.1. As against that, Mr. M.H. Rathod, learned advocate appearing for the respondent, has supported the judgment and award passed by the Tribunal and has further placed reliance on the order dated 19/12/2000 passed by this Court [Coram : P.B. Majmudar, J.] in Special Civil Application No. 4689 of 2000 in the case of Gujarat State Road Transport Corporation v/s. S.T. Part-time Employees Union, wherein learned Single Judge has upheld similar direction given by the Tribunal to the Corporation in the case of the Part-timers. He has further submitted that against the said order the Corporation had preferred Letters Patent Appeal No. 17 of 2001, which was dismissed as not pressed by the Division Bench of this Court vide order dated 18/12/2001. He, therefore, submitted that this petition has no substance and it is required to be dismissed.

5. Having gone through the record of this petition and in particular the judgment of the Tribunal, it clearly appears that the respondent was working with the petitioner since 28th November, 1977 on part-time basis. Further it appears that there is reliable evidence on record to come to the conclusion that the respondent was required to render service for more than 5 hours a day, on every day though according to the regulations, a Part-timer was not required to put in more than 5 hours' service. It also appears from the material on record that the duties that were being performed by the respondent were of permanent nature. She has adequately described these duties in her evidence. In other words, the work, which was required to be rendered by her was of

perennial nature and the post which she was holding as a Part-timer was also a permanent post. The question now that is required to be considered is whether the petitioner was justified in not accepting her request to make her permanent on the said post solely on the ground that she had not cleared the requisite examination. This aspect has been adequately dealt with by the Tribunal in para. 12 of its judgment. It appears that though the petitioner has averred that a part-timer is required to appear in the examination and clear it before he or she could be made permanent, no supporting evidence has been produced on record. In fact the circular that had been produced by the petitioner which is numbered as 534 of 1976 dated 14/4/1976 for this purpose does not give any such indication. It is entirely on different aspect though it deals with Part-timer. In fact in the said circular it has been stated that if a Part-timer had rendered 4 years' service, the experience to be considered would be of two years. This in no way substantiates the contention of the petitioner with regard to passing of the examination. Though petition has been amended, the amendment does not cover this aspect. If that be so, there is no other evidence on record which would support its case. As stated above, no oral evidence has been led by the petitioner. Merely because it is stated that it is an established practice of the Corporation, it would not mean that it has become a requisite qualification or a statutory regulation requiring Part-timer to appear in the examination and clear it. When that is not so, the contention of the petitioner cannot be accepted and it has been rightly rejected by the Tribunal calling for no interference by this Court.

6. Second aspect is whether the circumstances which have been taken into consideration by the Tribunal for giving the aforesaid direction to make the respondent a permanent employee of the Corporation is proper. The factors which have been taken into consideration by the Tribunal have been adequately dealt with in the paras. 14 and 15 of the judgment. It has taken into consideration the fact that the respondent had been working on this post right from the month of November 1977. She had been rendering services of various kinds and the nature of duties which she had performed during all these years showed that the work she was doing was of permanent nature. Further that she was duly qualified to hold post of Clerk on regular basis. It has also taken into consideration the services rendered by her father not only to the petitioner but also to the nation by serving in the Army. In my opinion, all these are

relevant considerations for giving aforesaid direction. In fact, as stated above, it is duly established by the respondent that she had been working almost for 6 to 7 hours or 8 hours in a day almost every day, though legally she was not required to work beyond 5 hours. In these circumstances, the judgment and award of the Tribunal directing the petitioner to make the respondent a permanent employee and to pay to her all the benefits that are being made available to an employee of the grade of Clerk, is absolutely just and proper and does not call for any interference by this Court. In other words, this petition has no merit and it is dismissed. Rule discharged with no order as to costs.

[AKSHAY H. MEHTA, J.]

* Pansala.